

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yolo)

THE PEOPLE,

Plaintiff and Respondent,

v.

JUAN LOPEZ ZAVALA,

Defendant and Appellant.

C085255

(Super. Ct. No. CRF152310)

This case involves the ongoing problem of awarding presentence credits. Defendant Juan Lopez Zavala's probation had been revoked in this case, but he was not placed into custody until his arrest on charges that led to an unrelated case. The trial court reinstated probation in this case and placed defendant on informal probation in the other case, subject to a jail term with credit for the time in custody between arrest and disposition. When the trial court ultimately terminated probation in this case and imposed a prison term, it did not award credit for the time in custody related to the other case. It also did not impose sentence in the other case.

On appeal, defendant contends he is entitled to credit for that time as a matter of statutory interpretation and equal protection. We disagree, as that custody is solely related to the other case.

BACKGROUND

We dispense with a recitation of the facts of defendant's crimes and probation violations as they are unnecessary to resolve this appeal.

On May 5, 2015, defendant pleaded no contest to stalking in violation of a court order (Pen. Code, § 646.9, subd. (b))¹ and criminal threats (§ 422) in the present case, Yolo County Superior Court case No. CRF152310 (case No. 2310). The trial court placed defendant on three years' formal probation subject to a 365-day jail term with 148 days of credit (74 actual and 74 conduct) on June 2, 2015.

Defendant's probation was summarily revoked and a warrant was issued for his arrest on October 20, 2015. He remained out of custody until he was arrested for resisting an officer (§ 148, subd. (a)(1)) on September 3, 2016, and was charged with two counts of resisting an officer in Yolo County Superior Court case No. CRF165015 (case No. 5015). A second probation violation in case No. 2310 was filed on September 8, 2016, and defendant was arraigned on the same day, with probation remaining summarily revoked.

On October 7, 2016, defendant pleaded no contest to two counts of resisting an officer in case No. 5015 and admitted violating probation in case No. 2310. That day, the trial court reinstated probation in case No. 2310 and placed defendant on two years' informal probation in case No. 5015. As a condition of the informal probation in case No. 5015, the trial court ordered defendant to serve 90 days in jail with 69 days of presentence credit, consisting of 35 days of actual custody and 34 days of conduct credit.

¹ Undesignated statutory references are to the Penal Code.

Defendant's probation was revoked again on January 17, 2017. On February 24, 2017, defendant admitted violating probation, which was reinstated by the trial court.

Probation was revoked a fourth time on April 7, 2017. Defendant was subsequently charged in Yolo County Superior Court case No. CRF172237 (case No. 2237) with providing false identifying information to an officer (§ 148.9) and possession of a controlled substance (Health & Saf. Code, § 11377, subd. (a)).

Following a contested hearing on July 26, 2017, the trial court found defendant in violation of his probation and terminated probation. On July 31, 2017, defendant was sentenced in case No. 2310 to a three-year eight-month state prison term with 525 days of presentence credit (263 actual and 262 conduct). Probation in case No. 5015 was terminated without imposition of sentence. The People also dismissed case No. 2237.

During the pendency of this appeal, appellate counsel successfully requested the trial court to amend the award of presentence credits to 528 days (264 actual and 264 conduct). Appellate counsel subsequently filed a motion in the trial court to award presentence credits for the time in custody between September 3, 2016, and October 17, 2016. The trial court denied the motion.

DISCUSSION

Defendant contends he is entitled to presentence credit in this case for the time he spent in custody from September 3, 2016, to October 17, 2016, under section 2900.5. He alternatively argues that he is entitled to the credits as a matter of state and federal equal protection. We disagree.

Section 2900.5 allows a defendant to receive credit "upon his or her term of imprisonment" for time spent in custody prior to being sentenced. (§ 2900.5, subd. (a).) It provides in part: "For the purposes of this section, credit shall be given only where the custody to be credited is attributable to proceedings related to the same conduct for which the defendant has been convicted. Credit shall be given only once for a single period of custody attributable to multiple offenses for which a consecutive sentence is imposed."

(§ 2900.5, subd. (b).) “For the purposes of this section, ‘term of imprisonment’ includes any period of imprisonment imposed as a condition of probation or otherwise ordered by a court in imposing or suspending the imposition of any sentence” (§ 2900.5, subd. (c).)

In *People v. Bruner* (1995) 9 Cal.4th 1178, the California Supreme Court examined the operation of section 2900.5 to hold that “where a period of presentence custody stems from multiple, unrelated incidents of misconduct, such custody may not be credited against a subsequent formal term of incarceration if the prisoner has not shown that the conduct which underlies the term to be credited was also a ‘but for’ cause of the earlier restraint. Accordingly, when one seeks credit upon a criminal sentence for presentence time already served and credited on a parole or probation revocation term, he [or she] cannot prevail simply by demonstrating that the misconduct which led to his [or her] conviction and sentence was ‘a’ basis for the revocation matter as well.” (*Bruner*, at pp. 1193-1194.) In so holding, the Supreme Court explained that “[s]ection 2900.5 is not intended to bestow the windfall of duplicative credits against all terms or sentences that are separately imposed in multiple proceedings.” (*Bruner*, at p. 1191.)

The probation report calculated that as of June 28, 2017, defendant had spent 230 days in custody attributed to case No. 2310 for various times in custody from August 20, 2013, to June 28, 2017, 45 days in custody in case No. 5015 for time between September 3, 2016, and October 17, 2016, and one day in custody in case No. 2237 for May 11, 2017. The trial court awarded 263 days of actual credits and 262 days of conduct credits at the July 31, 2017 sentencing hearing. Although the trial court did not specify how it came to that calculation, it is readily inferred that the total was derived from the 230 days in case No. 2310 plus the 33 days defendant spent in custody between the June 28, 2017 probation report and sentencing on July 31, 2017. Defendant’s successful motion on appeal was to amend the award of credits to include the one day of presentence time served in case No. 2237.

Defendant's argument is that he is entitled to credit for the time in custody between September 3, 2016, and October 17, 2016, because he was never sentenced in case No. 5015. He notes that informal probation is called a "conditional sentence." (See § 1203, subd. (a); *People v. Kaufman* (2017) 17 Cal.App.5th 370, 396.) Citing *In re Marquez* (2003) 30 Cal.4th 14 (*Marquez*) and *People v. Gonzalez* (2006) 138 Cal.App.4th 246 (*Gonzalez*), defendant asserts this time in custody became solely attributed to case No. 2310 when probation terminated without sentence in case No. 5015. He concludes that the trial court thus erred in denying him presentence credit for this time.

We reject defendant's reliance on *Marquez, supra*, 30 Cal.4th 14. *Marquez* involved a defendant convicted of burglary in both Monterey County and Santa Cruz County. (*Id.* at p. 17.) The defendant was taken into custody in Santa Cruz County on burglary allegations. (*Ibid.*) Shortly thereafter, Monterey County requested Santa Cruz County to hold him with respect to a second unrelated burglary. (*Ibid.*) The defendant was convicted of burglary in both the Santa Cruz County case and the Monterey County case. (*Id.* at p. 18.) The Santa Cruz County conviction was eventually reversed and dismissed, and the defendant sought credit in the Monterey County case for the time spent in custody after Monterey County requested Santa Cruz County to hold him. (*Ibid.*) He argued that once the Santa Cruz County conviction was reversed and dismissed, his confinement for this time period was attributable to the Monterey County case. (*Id.* at p. 19.) The California Supreme Court agreed with the defendant, reasoning that "because his custody after placement of the Monterey County hold was attributable to both his Santa Cruz and Monterey County cases, dismissal of the Santa Cruz County charges still left him with the Monterey County sentence against which credit for all of his custody from placement of the Monterey County hold until imposition of sentence could be applied." (*Id.* at p. 21, italics omitted.)

Case No. 5015 was not dismissed like the Santa Cruz charges in *Marquez*. Rather, probation was terminated without sentencing. More importantly, defendant's custody from September 3, 2016, to October 17, 2016, was related solely to that case. His initial custody was a result of being arrested for crimes that became the charged offenses in case No. 5015. At the October 7, 2016 disposition, he was ordered to serve 90 days in jail as a condition of probation. Pursuant to section 2900.5, subdivision (c), the trial court awarded 35 days of actual and 34 days of conduct credit for the time defendant was in custody from his arrest until disposition. Defendant then served the remaining time on the jail term and was released on October 17, 2016. Thus, the entirety of the time in custody in question is solely attributed to the jail term ordered as a condition of probation, either as section 2900.5 credit or as time served as a condition of probation in case No. 5015.

Defendant's observation that informal probation is a conditional sentence is a distinction without a difference. A grant of any form of probation, either formal or informal, differs from imposition of sentence. "As used in this code, 'probation' means the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer." (§ 1203, subd. (a); see *In re White* (1969) 1 Cal.3d 207, 212 ["When the trial court suspends imposition of sentence and grants probation, no judgment is entered until such time as the probation is revoked and the defendant is sentenced"].) While credits under section 2900.5 are called presentence credits, under subdivision (c), they are used to offset time imposed as a condition of probation rather than as a part of the defendant's sentence.

Defendant's reliance on *Gonzalez* is no more persuasive. In *Gonzalez*, the defendant pleaded guilty to domestic violence and was placed on five years' formal probation. (*Gonzalez, supra*, 138 Cal.App.4th at pp. 248-249.) During the probationary period, he was charged with auto theft and gun possession. (*Id.* at p. 249.) While in

custody awaiting trial on the auto theft and gun charges, he was charged with assaulting another inmate. (*Ibid.*) The defendant was convicted of the auto theft and gun charges, pleaded no contest in the assault case, and admitted the probation violation. (*Id.* at pp. 249-250.) In awarding presentence credit, the trial court calculated the time served from the date of the defendant's arrest in the auto theft and gun case to the date of the assault, and allocated that credit to the domestic violence case. (*Id.* at p. 250.) The credit in the domestic violence case exceeded the sentence imposed in that case. (*Id.* at p. 251.)

The defendant argued, and the Court of Appeal agreed, that the credit could be applied to the auto theft and gun case even though it was not the sole reason for the presentence confinement. The court held that the custody could be attributed to “ ‘multiple, unrelated causes.’ ” (*Gonzalez, supra*, 138 Cal.App.4th at p. 252.) It reasoned that the prohibition in section 2900.5, subdivision (b) against duplicate credit would not be violated because the defendant did not seek duplicate credit for the period of confinement. (*Gonzalez*, at p. 252.)

Gonzalez is inapposite because defendant's custody from September 3, 2016, to October 17, 2016, was attributable solely to the conduct that led to the conviction in case No. 5015. His custody during that period was not attributable to multiple, unrelated causes like in *Gonzalez*. He received credit for the time between September 3, 2016, and October 17, 2016, in case No. 5015. He is not entitled to credit for that time in this case.

Defendant's equal protection claim rests on the premise that defendant was denied custody credit for time spent in custody on the charge for which he was convicted. As we have explained, the premise is invalid. (See *People v. Davis* (1986) 187 Cal.App.3d 1250, 1256 [“the concern for equal protection embodied in Penal Code section 2900.5 was to avoid the danger of ‘unequal treatment suffered by indigent defendants who, because of their inability to post bail, served a longer overall confinement than their wealthier counterparts.’ [Citations.] This potential for unequal treatment would arise only when the same conduct was attributable to both proceedings. (See Pen. Code,

§ 2900.5, subd. (b))”].) As the time in question here was solely related to case No. 5015, his claim is without merit.

DISPOSITION

The judgment is affirmed.

RAYE, P. J.

We concur:

MAURO, J.

RENNER, J.